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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/765,487

01/27/2004

Mario Boisvert

14-733C2D1

9537

7590

04/06/2006

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EXAMINER

FLETCHER, MARLON T

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,487

Applicant(s)

BOISVERT ET AL.

Examiner

Marlon T. Fletcher

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 12 and 22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22 and 16, respectively of U.S. Patent No. 5,952,801. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter does not vary. Why the claim may be worded slightly different, there is no difference in the subject matter being claimed. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the claim language in either application to cover the same subject matter.

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang (5,982,124).

Wang discloses an apparatus and method for controlling motion of a motor driven element in a vehicle over a range of motion and for altering said motion when undesirable resistance to said motion is encountered, said apparatus comprising: a sensor (30) for measuring a parameter of a motor coupled to the motor driven element that varies in response to a resistance to motion during all or part of a range of motion of the motor driven element; a memory (50) for storing a number of measurement values from the sensor based on measurements of said parameter over at least a portion of said range of motion; a switch (22) coupled to said controller for controlling energization of the motor with an energization signal; and a controller (24) coupled to the memory for determining to de-activate the motor based on the measurement values stored in the memory as the motor driven element moves over its range of motion; and a controller interface (26) coupled to the motor for altering motion of said motor driven element in response to a determination made by the controller. Wang also discloses an apparatus and method for controlling motion of a motor driven element in a vehicle over

a range of motion and for altering said motion when undesirable resistance to said motion is encountered, said method comprising, measuring a parameter of a motor coupled to the motor driven element that varies in response to a resistance to motion during all or part of a range of motion of the motor driven element by taking a multiplicity of measurements as the motor moves the motor driven element over its range of motion (abstract and column 4, line 53 through column 5, line 11); storing a number of measurement values based on measurements of said parameter over at least a portion of said range of motion (column 5, line 56 through column 6, line 11); determining that the parameter is outside a parameter range based on previous stored measurement values as the motor driven element moves over its range of motion (column 4, lines 16-52); and altering motion of said motor driven element in response to a determination that the parameter is outside the parameter range (column 4, lines 16-31 and column 7, lines 35-50). Wang further discloses the method, wherein the motor driven element is a window or panel and additionally comprising reverse actuating the window or panel prior to moving said window or panel in a direction to close the window or panel (abstract; and column 4, lines 15-31). Wang further discloses the method, additionally comprising maintaining a position of the window or panel based on the sensed parameter and the reverse actuation is initiated if a leading edge of the window or panel is near a closed position and wherein movement is first initiated toward a closed position when a leading edge of the window or panel is near the closed position and wherein the reverse actuation is performed upon a sensing of an obstacle that is based

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on determining the parameter is outside the parameter range (column 3, line 22 through column 4, line 45; and column 5, lines 12-32). Wang discloses the apparatus, wherein the sensor for generating a speed signal comprises a Hall-effect sensor and wherein the sensor for generating a speed signal comprises a magnetic pick-up (column 2, lines 51-59).

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T. Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-w, F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on 571-272-2001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MTF
April 1, 2006



MARLON T. FLETCHER
PRIMARY EXAMINER